"This was the view taken of a similar statute by the Appellate Division of the Supreme Court of New York in a case that arose out of a written agreement to pay a stipulated sum for certain services looking to the setting aside of the will of Samuel J. Tilden, in connection with which the plaintiff claimed that he had procured for the defendant a loan of $30,000.

"The agreement being in evidence, and the Usury Act being substantially similar to ours, a motion to nonsuit was made at the trial upon the grounds urged in the present case. In denying this motion the trial court said:

"'I decide that the plaintiff cannot maintain an action upon that paper; but, inasmuch as it is the right of this plaintiff to recover against this defendant for services which he has rendered at his request, he may go to the jury upon that theory, and recover what the jury shall say his services were worth, provided the jury will find that the defendant employed him to render the services.'

"Upon appeal, Cullen, J., said: 'There is no provision in the statute rendering a contract or agreement to pay a greater compensation than that prescribed wholly void. One who renders services as a broker under an agreement to pay a higher compensation is entitled to receive pay for his services, but he cannot recover any more than the statutory compensation. * * * As the statute merely prescribes the rate of compensation, but does not defeat the action, it was unnecessary for the defendant to plead the statute. * * * No recovery could be had against the defendant for the alleged breach of his written agreement. We do not see why the plaintiff was not entitled (if the jury found the facts in his favor) to recover for his services at the statutory rate.' (Buchanan *v.* Tilden, 18 App. Div. 123, 45 N. Y. Supp. 417).

"The view thus illustrated seems to us to be both in theory and in practice preferable to the opposite view, which makes a gratuity of services rendered to one who expected to pay for them merely because he agreed to pay for them more than the plaintiff was legally entitled to receive. This is both harsh and illogical. The rendition and acceptance of the services gave a complete right of action, subject to the statutory limitation as to the amount to be recovered, which cannot be exceeded by the making of an express agreement on which an action could not be maintained. Such a contract being void leaves the right of action that was entirely independent of such contract unaffected by anything in the statute which expressly provides a penalty that is utterly inconsistent with the forfeiture of all right of recovery upon a perfectly valid right of action."

Bills and Notes—Negotiability—Certainty of Sum to Be Paid.—In Coolidge & McClaine *v.* Saltmarsh, in the Supreme Court of Washington (June, 1917, 165 Pac. 508), it was held that under the provision of the Negotiable Instruments Law (Rem. Code, § 3392), declaring

that an instrument in order to be negotiable "must contain an unconditional promise or order to pay a sum certain in money," a note in which it is agreed to pay any taxes assumed upon the note or its mortgage security is not negotiable, and this, although there is no law in force for the taxation of notes or mortgages. The court said in part:

"The promissory note, given by Saltmarsh and wife to Ryrie and transferred by him to McCowat, is as follows:

"'$2,400.00. Coulee City, Wash., Feb. 25, 1911.

"'On the first day of January, A. D. 1916, I promise to pay to the order of D. Ryrie, Spokane, Washington, the sum of twenty-four hundred and no-100 dollars, United States gold coin of the present standard of weight and fineness, payable at Spokane, Wash., with interest thereon, in like coin, after maturity, until paid, at the rate of eight per cent per annum. And in case suit or action is instituted to collect this note or any part thereof, I promise to pay in addition to the costs and disbursements provided by statute such sum as the court may adjudge reasonable as attorney's fees in such suit or action, and to pay, in each year, on or before ten days before the same become delinquent, at said office, the taxes assessed in the State of Washington upon the mortgage given to secure this note and the debt thereby secured, or upon this note or any part thereof. This note is given for the principal on an actual loan of twenty-four hundred and no-100 dollars, United States gold coin, and is secured by a mortgage on real estate of even date herewith.

"'I contract and agree that if the mortgaged property shall not, in the event of a foreclosure sale thereof, realize sufficient to pay in full the sum due under said mortgage, together with costs and expenses of foreclosure action, a deficiency judgment shall be rendered for any unpaid balance, which I promise to pay.

"'No. of Note. ——— Robert S. Saltmarsh.

"'Loan No. 728. Margaret Saltmarsh.'

"The Negotiable Instruments Act (Rem. Code, sec. 3392) declares that an instrument 'must contain an unconditional promise or order to pay a sum certain in money' in order to be negotiable. The note in question, in addition to being for a sum named, also contains a promise to pay any taxes assessed upon the note or upon the mortgage securing it. We held in Bright *v.* Offield (81 Wash. 442, 143 Pac. 159) that such a provision in the note renders it non-negotiable. In that case there was involved a provision in the note for payment of taxes, which constituted an implied rather than a direct promise by the maker to pay them. The court there said:

"'Since the amount of these taxes, rates and assessments is uncertain, the amount of recovery would be uncertain. This provision, therefore, renders the note not merely an unconditional promise to

pay a sum certain, but also, in necessary effect, a conditional promise to pay an uncertain sum.'

"The fact, as urged by appellant, that there was no law in force in this State for the taxation of notes and mortgages would not detract from the effect of the rule. There always remains a possibility during the life of such contracts that they may be subjected to the liability of taxation, and a promise in the note to pay any taxes thereon would leave the amount to be paid indeterminate and open to conjecture upon the contingency of future legislation. (See Carmody *v.* Crane, 110 Mich. 508, 68 N. W. 268; Walker *v.* Thompson, 108 Mich. 686, 66 N. W. 584; Smith *v.* Myers, 207 Ill. 126 69 N. E. 858; Farquhar *v.* Fidelity Ins., etc., Co., Fed. Cas. No. 4676.)"

Corporations; Transfer of Stock; Right to Dividends.—In Lafountain & Woolson Co. *v.* Brown, decided by the Supreme Court of Vermont (101 Atl. 36), it was held that the dividend on stock sold ordinarily belongs to the one who was owner thereof when the dividend was actually declared. Where a dividend was declared after the execution of a valid contract for the sale of corporate stock, but before arrival of the time for delivery and paymetn, the buyer, on complying with the contract, was entitled to the dividend. The court said:

The action is contract for money had and received. The plaintiff seeks to recover the amount of a dividend on stock purchased by it from the defendant. The case was tried by the court on an agreed statement of facts, and the plaintiff had judgment.

The defendant was the owner of the major part of the capital stock of the Brown Hotel Company, a corporation, operating a hotel at Springfield, Vt., and one of the three directors of the corporation. On March 24, 1916, he had negotiations with plaintiff's representative regarding the sale of the capital stock of the hotel company. Later the same day the defendant's agent called plaintiff's representative by telephone and told him that the defendant would sell his stock to the plaintiff at a certain price per share. Plaintiff's representative replied that the plaintiff would take the stock at the price named and pay for it the following morning, to which defendant's agent assented. No part of the stock was then delivered nor any part of the purchase money paid; neither was any written memorandum of the bargain made. On the following morning the defendant and plaintiff's representative met and the transaction was completed by delivery of the certificate of stock and payment of the purchase price. During the negotiations nothing was said about cash in the treasury of the hotel company.

On March 24, 1916, after the above telephone conversation, the defendant called a meeting of the directors of the hotel company, and